

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

XEZAKIA ROUSE,

Plaintiff,

v.

No. CIV 10-1094 JP/GBW

C.O. CRUZ,

Defendant.

ORDER

THIS MATTER comes before the Court following the Order of April 11, 2011, wherein the Court ordered the United States Marshal's Service ("USMS") to personally effect service of the summons and complaint in the above-captioned case upon Defendant Correctional Officer ("C.O.") Cruz. *Doc. 13.* On April 20, 2011, the USMS returned the summons unexecuted. *Doc. 19.* In the "Remarks" section of the return, the USMS indicated that "Bernalillo County Human Resources Department" informed the USMS "that there are 5 C.O.s with last name 'Cruz' working at [Metropolitan Detention Center]." *Id.* at 1. As a consequence, the USMS remarked that it was "unable to serve" process "without the first name of C.O. Cruz." *Id.*

In cases involving a plaintiff proceeding *in forma pauperis*, the USMS, upon order of the court, shall serve the summons and the complaint. FED. R. CIV. P. 4(c)(3) (2011). Nevertheless, the plaintiff retains the responsibility of providing the Court with information sufficient to allow the USMS to identify the defendant. *Graham v. Satkoski*, 51

F.3d 710, 713 (7th Cir. 1995) (citing *Sellers v. United States*, 902 F.2d 598, 602 (7th Cir. 1990)).

At present, the USMS reports that it has insufficient information to identify which of the five possible correctional officers surnamed Cruz Plaintiff has sued. Until such time as the proper C.O. Cruz can be identified, Plaintiff's suit will remain stalled. Therefore, the Court **ORDERS** Plaintiff to provide a name, including a first name or initial, or if that is not available, any distinguishing features which would enable the identification of the proper Defendant Cruz.

The Court **HEREBY ORDERS** Plaintiff to provide the Court with this information in a pleading no later than thirty (30) days from the date of this order so that the Court can provide the USMS with sufficient information for service to be effected under Federal Rule of Civil Procedure 4(c)(3). *See Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994). Failure to do so may result in dismissal of the complaint against Defendant C.O. Cruz.

IT IS SO ORDERED.



UNITED STATES MAGISTRATE JUDGE